

Notice of Allowability	Application No.	Applicant(s)	
	10/070,833	BELMONT ET AL.	
	Examiner	Art Unit	
	Russell M Kobert	2829	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Election filed August 11, 2004.
2. ☒ The allowed claim(s) is/are 1-5.
3. ☒ The drawings filed on 11 March 2002 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>1004</u>. 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input checked="" type="checkbox"/> Other <u>Acknowledgement of Election.</u> |
|---|--|

Acknowledgement of Election

1. Applicant's election with traverse of Invention I, claims 1-5, in the reply filed on August 11, 2004 is acknowledged. The traversal is on the ground(s) that the search and examination of the entire application could be made without serious burden because the subject matter of all claims is sufficiently related that a thorough search for the subject matter of any one group of claims would encompass a search for the subject matter of the remaining claims. This is not found persuasive because Applicants have not shown that the groups are not patentably distinct. A serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02. In the restriction mailed on July 14, 2004, the examiner provided a prima facie explanation for each of the inventions having a separate status in the art and a different field of search.

The requirement is still deemed proper and is therefore made FINAL.

Reasons for Allowance

2. In Applicants' Remarks filed April 20, 2004, Applicants explained how the applied prior art of record fails to anticipate Applicants' claimed invention. Claims 1-5 remain unchanged since the remarks were filed on April 20, 2004. Applicants' arguments are

Art Unit: 2829

persuasive and claims 1-5 are now allowable. Upon further search, no prior art has been found that anticipates the limitations of claim 1.

Examiner's Amendment

3. This application is in condition for allowance except for the presence of claims 6-14 to an invention non-elected with traverse in the reply filed on August 11, 2004.

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

5. Applicants' attorney, Ms. Julie M. Seaman, was contacted on October 18, 2004 to request cancellation, by Examiner's Amendment, of claims 6-14 drawn to an invention non-elected with traverse. On October 20, 2004, Ms. Seaman granted permission to cancel claims 6-14.

6. Claims 6-14 have been canceled.

Art Unit: 2829

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell Kobert whose telephone number is (571) 272-1963.

The Examiner's Supervisor, Michael J. Tokar, can be reached at (571) 272-1812.

For an automated menu of Tech Center 2800 phone numbers call (571) 272-2800.



Russell M. Kobert
Patent Examiner
Group Art Unit 2829
October 21, 2004



DAVID ZARNEKE
PRIMARY EXAMINER

10/26/04